

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA

vs.

JEREMY JAVON FULTON (1)

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NO. 1:09-cr-00329-SS-1

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE SAM SPARKS
UNITED STATES DISTRICT JUDGE**

The undersigned submits this Report and Recommendation to the District Court, pursuant to 28 U.S.C. § 636(b), 18 U.S.C. § 3401(i), and Rule 1(d) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

I. PROCEDURAL BACKGROUND

On December 11, 2009, Jeremy Javon Fulton was sentenced to 188 months imprisonment for Possession with the Intent to Distribute a Controlled Substance (Cocaine), in violation of 21 U.S.C. § 841(a)(1), and 120 months imprisonment for Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. 922(g)(1), to be served concurrently, followed by a three-year term of supervised release. Mr. Fulton's sentence was reduced twice, ultimately to 115 months as to each count, to be served concurrently. His supervision commenced on April 26, 2018.

In an Amended Petition for Warrant or Summons for Offender under Supervision ("Petition") (Dkt. 105), the Probation Office alleges that Mr. Fulton violated Mandatory Condition No. 1 of his supervision, not to commit another crime, and the Special Condition to abstain from the use of

alcohol and all other intoxicants. On July 4, 2020, Mr. Fulton allegedly assaulted his son's mother after consuming alcohol, as described in the Amended Petition. On July 7, 2020, an Assault Strangulation with Previous Conviction Family Violence 2nd Degree Felony warrant for arrest was issued by Travis County, Texas. Mr. Fulton was arrested on the state warrant by the United States Marshal Service Task Force on July 23, 2020. On August 6, 2020, three Violation of Protective Order – Family Violence Class A Misdemeanor warrants for arrest were issued for Mr. Fulton. The cases remain pending in Travis County.

A preliminary and final revocation hearing was set for 2:30 p.m. on August 11, 2020. Mr. Fulton has waived his right to a preliminary revocation hearing. Dkt. 106.

II. ANALYSIS

Pursuant to Fed. R. Crim. P. 32.1(b)(2) and (c), a person may waive a revocation hearing, and a hearing before modifying the conditions of probation or supervised release is not required if: (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of supervised release; and (C) an attorney for the government has received notice of the relief sought, has had reasonable opportunity to object, and has not done so.

On August 10, 2020, the parties submitted an Agreed Recommended Disposition in Final Revocation Proceeding and Waiver of Defendant's Appearance and Waiver of Hearing ("Agreed Recommended Disposition"). Dkt. 107. The Agreed Recommended Disposition states that Mr. Fulton wishes to plead true to violating Mandatory Condition No. 1 and the Special Condition of his supervision to refrain from the use of alcohol. The parties further state that:

Mr. Fulton admits that he committed another federal, state or local crime, specifically the state crimes described in the Amended Petition and fully alleged in: (A) Warrant and Affidavit filed under Docket No. D-1-DC-20301051 Municipal Court, City of Austin,

Travis County, Texas, a violation of Texas Penal Code § 22.01 and (B) Warrants and Affidavits filed under Docket No. C-1-CR-20-501023, C-1-CR-20-501024, and C-1-CR-20-501024, Municipal Court, City of Austin, Travis County, Texas, all violations of Texas Penal Code §25.07. Mr. Fulton also admits that he consumed alcohol in violation of the Special Condition as described in the Amended Petition. He asks the Court to accept his plea of true to these violations and find that the proposed agreed resolution of the case would be an appropriate disposition.

Dkt. 107 at 2.

The parties further state that Mr. Fulton's counsel has reviewed the Petition and the Adjustment Summary prepared by the Probation Office (Dkt. 102) with Mr. Fulton and advised him of his right to a preliminary and final revocation hearing, including his rights either to be physically present or to appear by video, and his rights under Fed. R. Crim. P. 32.1(b)(2) to counsel, to the disclosure of the evidence against him, and to make a statement and present mitigating information. Dkt. 107 at 2. The parties state in the Agreed Recommended Disposition that, after consultation with counsel, Mr. Fulton wishes to waive his right to be present at his revocation hearing and also wishes to waive the hearing. *Id.* The agreed filing further states that the parties have conferred and agreed that an appropriate resolution of this matter would be to:

(1) accept Mr. Fulton's plea of true to the violations of Mandatory Condition No. 1, specifically the state crimes described in the Amended Petition and fully alleged in: (A) Warrant and Affidavit filed under Docket No. D-1-DC-20301051 Municipal Court, City of Austin, Travis County, Texas, a violation of Texas Penal Code § 22.01, and (B) Warrants and Affidavits filed under Docket No. C-1-CR-20-501023, C-1-CR-20-501024, and C-1-CR-20-501025, Municipal Court, City of Austin, Travis County, Texas, all violations of Texas Penal Code §25.07;

(2) accept Mr. Fulton's plea of true to consumption of alcohol, in violation of the Special Condition as described in the Amended Petition;

(3) revoke Mr. Fulton's term of supervised release;

(4) sentence Mr. Fulton to a period of incarceration of eight (8) months; and

(5) find that no supervised release should follow.

Id. at 3. The parties further state that "[t]his disposition is favorable to Mr. Fulton, and the Government does not object to it." *Id.*

III. FINDINGS OF THE COURT

Based on the parties' agreement and the Agreed Recommended Disposition, as well as Mr. Fulton's plea of "True" to the violation of Mandatory Condition No. 1 (not to commit another crime) and to violation of the Special Condition requiring him not to use alcohol, the Court finds that Mr. Fulton violated conditions of his supervised release by consuming alcohol and committing the state crimes described in the Amended Petition and alleged in the Travis County warrants and affidavits referenced above.

IV. RECOMMENDATIONS

Based on the agreement of the Government and the Defendant (Dkt. 107), the Court **RECOMMENDS** that Mr. Fulton's supervised release be **REVOKED** and that Mr. Fulton be sentenced to eight (8) months incarceration, with no supervised release to follow.

V. OBJECTIONS

Because this is an agreed disposition, there will be no objections to this Report and Recommendation, and the matter is ripe for the District Court to act on it.

SIGNED on August 11, 2020.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE